

Tens of Millions of Beachgoers Per Year



Ocean Economy

- “California has the largest Ocean Economy in the United States, ranking number one overall for both employment and gross state product”
- Beach goers in California spend as much as \$9.5 billion annually and the non-market values associated with beach going in California may be as high as \$5.8 billion annually.

Beach Closures

- San Diego County reported nearly 300 closing or advisory days in 2011 from all sources, and Orange County more than 750. Stormwater is the largest cause.
- An increase in water quality in Long Beach (a C grade), to the healthier standards of Huntington City Beach (a B grade) would create \$8.8 million in economic benefits over a 10-year period.

Public Health Costs

- Depending on the cost model used, for Orange County alone, excess cases of gastrointestinal illness from swimming in bacteria contaminated beachwater cost:
 - between \$6 million and \$16 million per year, or;
 - when willingness to pay *not* to get sick is included, between \$56 million and \$136 million per year.

The Clean Water Act



Beneficial Uses and Water Quality Standards

State must adopt water quality standards – include maximum permissible pollutant levels sufficiently stringent to protect public health and enhance water quality consistent with designated uses.

33 U.S.C. §§ 1311(b)(1)(C), 1313

Water quality standards provide a basis for regulating discharges “to prevent water quality from falling below acceptable levels.”

PUD No. 1 of Jefferson County v. Washington Dep’t of Ecology
(1994) 511 U.S. 700, 704



Receiving Water Limitations

2001 San Diego MS4 Permit:

discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.



Receiving Water Limitations

The Regional Board “included Parts 2.1 and 2.2 in the Permit without a ‘safe harbor.’” These are independently enforceable requirements that prohibit discharges that cause or contribute to a violation of Water Quality Standards.

L.A. County Mun. Storm Water Permit Litigation, No. BS 080548
at 7 (L.A. Super. Ct. March 24, 2005)

9th Circuit Court of Appeals

“no such ‘safe harbor’ is present in this Permit [there is] no textual support for the proposition that compliance with certain provisions shall forgive non-compliance with the discharge prohibitions.”

Natural Resources Defense Council v. County of Los Angeles
(2011) 673 F.3d 880, 897



The Clean Water Act

Anti-Backsliding:

“when a permit is renewed or reissued, interim effluent limitations, standards, or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit.”

40 C.F.R. 122.44(l)(1)



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AUG 08 2012

Mr. Jay Sakai, Director
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Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

“Backsliding is prohibited in NPDES permits. . . .
Allowing additional time to complete a task that was
required by the previous permit constitutes a less
stringent condition and violates the prohibition
against anti-backsliding.”

referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A of the MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Prince George’s County permit.

EPA’s objection to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:

1. Water Quality Standards

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. §122.44(d)(1)(i). Part VI of the draft Prince George’s County permit (Enforcement and Penalties) contains general language

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Antidegradation Policy

Protects existing uses and water quality necessary to support existing uses, or, for “high quality” waters, protects water quality better than necessary for “fishable/swimmable” uses.

Water quality may only be lowered in certain limited circumstances. In no case may water quality be lowered to a level which would interfere with existing or designated uses.

See, State Bd. Resolution 68-16,
40 CFR § 131.12



Impaired Waters and TMDLs



Ballona Creek, Los Angeles

(California Coastal Commission)

TMDLs are the means for bringing impaired waterways back into compliance for pollutants such as bacteria, metals, trash, etc.

Clean Water Act NPDES permits must be consistent with the waste load allocation (“WLA”) in each TMDL.

(40 C.F.R. § 122.44(d)(1)(vii)(B))

Legal Context

MS4 Permits:

shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

33 U.S.C. § 1342(p)(3)(B)(iii)

Low Impact Development



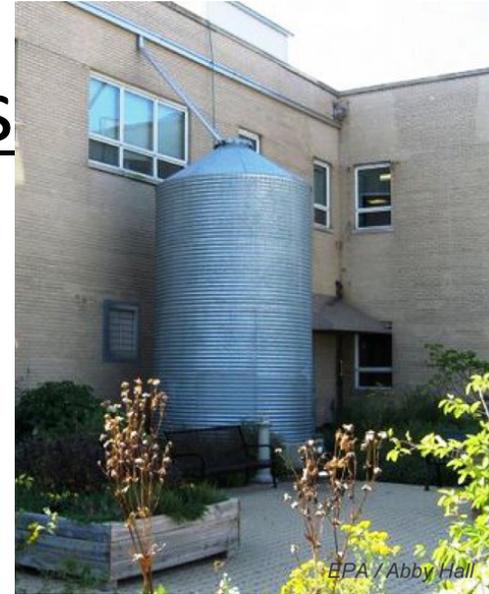
Environmental Services, City of Portland, Oregon/Kevin Robert Perry

Impervious vs. Pervious Surfaces and Groundwater Recharge



City of Lincoln, NE, Watershed
Management Division

Infiltration & Capture BMPs



LID is Cost Effective

National Association of Home Builders: Lower Costs through LID



Ever wish you could simultaneously lower your site infrastructure costs, protect the environment, and increase your project's marketability? Using Low Impact Development (LID) techniques you can.

focused c
Environm
practices
protectin

techniques that conserve natural systems and hydrologic functions on a site.

LID has a variety of benefits to Builders, Municipalities, and the Environment such as:

- The reduction of land clearing and grading costs;
- Balancing the need for growth and environmental protection;
- The protection of local land and water resources.

LID utilizes a system of source controls and small-scale, decentralized treatment practices to help maintain a hydrologically functional landscape. The conservation of open space, the reduction of impervious surfaces, and the use of small-scale storm water controls, such as bioretention, are just a few of the LID practices that can help maintain predevelopment hydrological conditions.

Featured case study

Somerset is an 80-acre development in suburban Maryland consisting of 199 homes on 10,000 square foot lots. During Somerset's creation, the developer used LID practices to reduce its storm water management costs. By using LID, the developer:

- Eliminated the need for storm water ponds by using bioretention techniques saving approximately \$300,000;
- Gained 6 additional lots and their associated revenues;
- Reduced finished lot cost by approximately \$4,000.

For more information, download copies of the [Builder's Guide to Low Impact Development](#) and [Municipal Guide to Low Impact Development](#) brochures.



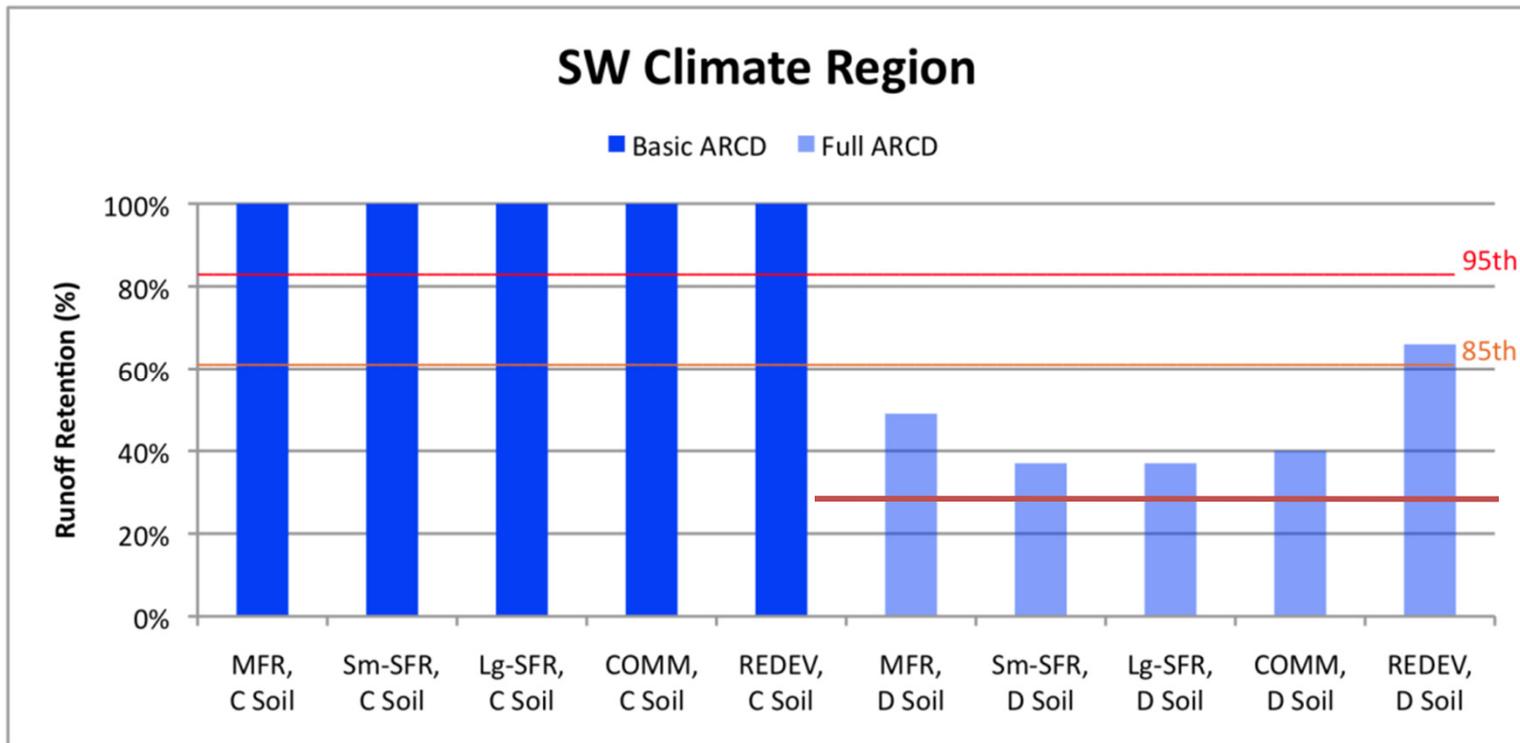
the vast majority of cases, the U.S.
that implementing well-chosen LID
ers, and communities while



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Feasibility of Retention



Public Participation & Board Oversight

“Stormwater management programs that are designed by regulated parties must, in every instance, be subject to meaningful review by an appropriate regulating entity. . . .”

Environmental Defense Center v. U.S. EPA (9th Cir. 2003) 344 F.3d 832, 854-56

